

The first proposition to be remembered, as it has received general judicial approval, is that an arm is worth more than a leg. Further, it seems to me that, depending on whether a person is right-handed or left-handed, a right arm is worth more than a left arm and *vice versa* respectively. In the present case I understand that the plaintiff was right-handed and it is quite obvious that he can never be a taxi driver any more. Whether he will be able to obtain any other form of employment, except in the lightest duties, is a matter for speculation. In some of the decided cases, injured persons have, as an act of charity, been retained in employment in the performance of less arduous duties by their former employers. In such cases they have not suffered the same loss of income as in the case of those who were completely unfit to carry out any duties at all or were unable to obtain gainful employment of any kind.

I now turn to Singapore cases. There is only one reported case *Van der Velde v. Lim Seow Tat & Anor.*⁽⁵⁾ where Chua J. made an award of general damages to the extent of \$45,000. In that case, however, the plaintiff, who was a Dutch bank officer, suffered no loss of earnings but he underwent considerable pain and suffering for a very considerable period of time. He also underwent many operations and saw many medical advisers and surgeons.

I have since discovered another case, also decided by Chua J., which is unreported and I therefore sent for the file concerned. I have had the advantage of seeing a written judgment by my learned brother in that suit, i.e. Suit No. 902 of 1957, *Mohamed Haneefa s/o Sulaiman Pillai v. E. Krishnam Chettiyar.*⁽⁶⁾ He awarded \$25,000 general damages in that case. There the man lost his left arm which had to be amputated and he was in severe pain for a week or so after the operation. He remained in hospital for about three weeks after which he was discharged but he had to attend the General Hospital as an out-patient for a further four months or so. He was re-employed by his employers, the Singapore Traction Company, by whom he had been previously employed as a conductor, in the new capacity of a storekeeper, which gave him \$60 per month less than the salary he had previously drawn. In his case, also, the artificial arm was said to be not of any great use to him as the stump of the arm was too short for the effective functioning of the artificial arm. The plaintiff was 35 years of age, which is very near the age of the plaintiff in this case, but it should be borne in mind that that award was made 10 years ago.

It is by now accepted that awards should be in line with a discernible trend or pattern of awards in reasonably comparable cases because it is highly desirable that in similar cases involving persons who are of similar age, social and working habits, earning capacities and in-

tellectual as well as recreational pursuits, etc., there should be as much uniformity as it is possible to achieve. This will tell a suitor roughly what he can expect by way of compensation and, at the same time, enable defendants to anticipate what their liabilities are likely to be.

I would award him in respect of pain and suffering as a result of the total loss of his right arm and all the disadvantages arising from his disablement, apart from loss of earnings, the sum of \$25,000. I might have made this more if there had been evidence of greater pain and suffering than in *Mohamed Haneefa's* case. The latter received \$25,000 in 1957 for the loss of his left arm but that amount included an element for loss of earnings at \$60 per month. I think that the awards of \$28,000 in *Leow Fa's* case and \$45,000 in *Van der Velde's* case were probably as high as they were because the plaintiffs underwent greater hardships during treatment. In the latter case the award no doubt also took into account the fact that, as a Dutchman, it made little difference to his living standards whereabouts in the world he lived.

With regard to loss of future earnings I would assess this at \$23,000.

General damages therefore will amount to \$48,000 and, special damages being \$5,240, judgment will be entered for a total sum of \$53,240 altogether to be paid to the Public Trustee on his behalf.

Usual orders as to costs.

Order accordingly.

Solicitors: *Murphy & Dunbar; Allen & Gledhill.*

ABDUL RAHMAN v. TAN JO KOH

[F.C. (Azmi C.J. (Malaya), Ismail Khan and MacIntyre JJ.) December 14, 1967]

[Kuala Trengganu — Federal Court Civil Appeal No. X. 22 of 1967]

Tort — Assault — False imprisonment — Justification — Conflicting evidence — Damages.

This was an appeal from a dismissal on a claim for damages for assault and false imprisonment brought by the appellant, a carpenter, against the respondent a police constable attached to the police station at Tumpat, Kelantan.

The appellant and respondent gave somewhat different versions as to what happened. According to the respondent he met the appellant in the course of his rounds at a coffee shop. From the appellant's behaviour the respondent suspected the appellant of carrying a concealed weapon upon his person and the respondent asked the appellant whether he carried any. On the appellant denying possession of any weapon the respondent invited the appellant to go to the police station to be searched. The appellant refused to go to the police station immediately and thereupon the respondent arrested the appellant. The appellant however resisted the arrest and he was dragged to the police station (which was 100

yards away) by the respondent. He was searched in the presence of two police constables who witnessed the recovery of a knife from the fold of his sarong.

The appellant in his evidence said that when he refused to go to the police station the respondent caught him by the collar of the shirt and sarong and dragged him towards the police station. In the struggle which ensued the appellant's sarong slipped in consequence of which he found himself in an embarrassing situation as he was not wearing any underwear. He therefore submitted to the arrest. He also alleged that the respondent punched him in the stomach at the police station.

Held: (1) in regard to the alleged assault in the police station the trial judge had discredited the evidence of the appellant and this court was not disposed to interfere with that finding of fact;

(2) as for the assault in the coffee shop there was a conflict of evidence as to whether the appellant was told the reason for his arrest. The learned trial judge had considered this point and had stated in his conclusion that the appellant's great reluctance to go to the police station with the respondent stemmed from the fear of what the respondent had told the appellant in the coffee shop regarding what the respondent suspected the appellant of carrying and not to a consciousness of his innocence. There was no reason to disagree with this conclusion. The appeal should therefore be dismissed with costs.

(1) *Christie v. Leachinsky* [1947] A.C. 573.

FEDERAL COURT.

Dato' Wan Mustapha bin Haji Ali for the appellant.

Mohamed bin Yacob (Senior Federal Counsel) for the respondent.

Cur. Adv. Vult.

MacIntyre J.: This is an appeal from the judgment of the High Court at Kota Bharu dismissing a claim for damages for assault and false imprisonment brought by the appellant, a carpenter, residing at Chabang Empat, Tumpat, Kelantan, against the respondent, a police constable attached to the police station at the same place.

The assault and false imprisonment were said to have been effected on the 1st day of August 1964. The case for the appellant is that on the day in question while he was seated in a coffee shop drinking coffee the respondent, without giving any reason, asked him to accompany him to the police station. When he had refused to go without being told the reason, the respondent had caught him by the collar of his shirt and his sarong and dragged him towards the police station. In the struggle his sarong slipped, in consequence of which he found himself in an embarrassing situation as he was not wearing any underwear. He therefore submitted to the arrest and quietly went to the police station. There he was left for about five minutes with the police constable in charge of the police station. The respondent then returned carrying a piece of paper and taking him into another room where no one else was present, searched his person. In the course of the search, the respondent had produced a knife alleging to have found it in the

A fold of the appellant's sarong. When he denied possessing it, he was punched three times on the stomach. He was then charged forthwith of being in possession of an offensive weapon in contravention of the provisions of section 6 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance 1958 and later B tried and convicted by the magistrate at Tumpat. However, on appeal his conviction was quashed. He then commenced the civil action for damages which is the subject-matter of this appeal. It would appear from the record that the appeal was allowed on a technical point which need not be considered in this appeal.

C The respondent pleaded justification for the arrest and imprisonment. He deposed that on the day in question he had left the police station in the morning on crime prevention duty and in the course of his rounds saw the appellant seated in the coffee shop. When the appellant saw him, D he stood up and sat down and looked ill at ease. From his behaviour he suspected him of carrying a concealed weapon upon his person and forthwith asked him whether he carried any. On the appellant denying possession of any weapon, he had invited him to go to the police station to be searched. The appellant refused to go at once E but suggested that the respondent should go ahead and he would follow later. This suggestion only deepened his suspicion and he thereupon arrested the appellant. However, appellant resisted the arrest and he had therefore to drag him to the police station which was about 100 yards away. According to the respondent he F pulled the appellant by his sarong and 'semota' but denied that the sarong ever got loose or slipped. He further averred that in the police station the appellant was searched in the presence of two police constables who witnessed the recovery of the knife from the fold of his sarong.

G The evidence in this case falls into two parts. The first deals with the incident in the coffee shop in respect of which the appellant's evidence is partly substantiated by the evidence of two witnesses, namely, P.W.2 and P.W.3, and the respondent's evidence stands on its own merit; and the second deals with the incident in the H police station in respect of which the respondent's evidence is substantially corroborated by the evidence of two police constables, namely, D.W.2 and D.W.3 while the appellant's evidence stands on its own merit.

I With regard to the incident in the police station, the trial court has given a finding of fact to the effect that the search was conducted properly in the presence of D.W.2 and D.W.3 and that the knife was found concealed in the fold of the sarong worn by the appellant. Having not seen or heard the witnesses giving evidence, we are not in a position to question that finding of fact based purely on the credibi-

lity of the witnesses. It has not been shown to us that the finding is perverse or totally inconsistent with the surrounding circumstances.

The finding of the knife concealed on the person of the appellant at the police station is conclusive evidence that at the time he was apprehended in the coffee shop, he was in possession of the knife. In other words, at the time of his arrest the appellant was actually in possession of an offensive weapon in contravention of section 6 of the Corrosive and Explosive Substances and Offensive Weapons Ordinance, which is a seizable offence. In the circumstances, the question of whether the respondent had reasonable grounds for believing that evidence of the commission of an offence under section 6 was likely to be found on the appellant in order to conduct a search under section 8(1) of the said Ordinance is purely academic, and immaterial for the purpose of deciding whether the detention in order to effect the search amounted to false imprisonment or not.

In regard to the claim for damages in respect of assault, again the evidence relate to two incidents — one in the coffee shop and the other in the police station. In regard to the alleged assault in the police station, the learned trial judge had discredited the evidence of the appellant and for reasons already stated we are not disposed to interfere with that finding of fact. As for the assault in the coffee shop, the allegation by the appellant is that he was forcibly dragged by the respondent to the police station without giving any reasons for the arrest.

In *Christie v. Leachinsky*,⁽¹⁾ it was held that a person arrested on suspicion of committing an offence, is entitled to know forthwith the reason for his arrest and that if the reason was withheld, the arrest and detention would amount to false imprisonment, until the time he was told the reason. It would follow therefore from this proposition, that a person arrested without being told the reason is entitled to resist the arrest and any force used to overcome the resistance would amount to assault. In the instant case there is a conflict of evidence as to whether the appellant was told the reason for his arrest. The learned trial judge however did consider this point and his conclusion is stated in his judgment as follows: "I have also considered plaintiff's evidence in this respect and the events just before and subsequent to his being led to the police station, as against the evidence adduced by the defendant and his witnesses, and cannot avoid coming to the conclusion that the plaintiff's great reluctance to go to the police station with the defendant stemmed from the fear of what defendant had told him in the coffee shop regarding what he, the defendant, suspected the plaintiff of carrying, and not to a consciousness of his innocence."

We see no reason to disagree with this finding of fact by the learned trial judge, and the appeal is therefore dismissed with costs.

Azmi C.J. (Malaya) and Ismail Khan J. concurred.

Appeal dismissed.

Solicitors: Wan Mustapha & Co.

ANG CHAING LOCK v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong Hock Sim J.) December 14, 1967]

[Penang — Criminal Appeal No. 51 of 1967]

Penal Code, s. 193 — Contradictory statements made in course of police investigation and at trial — Accused corrects his previous statement after caution — Charge for giving false evidence — Contradiction must be clear and unambiguous to form the basis of charge.

Criminal Law and Procedure — Charge — Giving false evidence — Trial record — Production of certified copy of record as part of evidence.

In the trial of a case of theft the appellant gave such evidence for the prosecution which resulted in the accused being acquitted.

The evidence that he gave was alleged to be false in that it differed from what he had stated to the police officer who investigated that theft. This led to his being charged and tried in the sessions court, Penang for giving false evidence. He was convicted and sentenced to six months imprisonment. The whole of the trial record wherein the false evidence was alleged to have been given was produced in toto as part of the case against the appellant.

The charge as drafted did not clarify to the accused the falsity of the evidence alleged and which he had to meet.

Held: (1) it is wrong in a charge of giving false evidence to attach the whole trial record wherein the false evidence was alleged to have been given. It is sufficient to have an officer of the court produce a duly certified copy of the part of the evidence given by the appellant which formed the basis of the charge;

(2) while giving false evidence is at any time a serious offence, it is incumbent on the trial president not to allow himself to be swayed thereby but to scrutinise the charge and the evidence with great care as upon a conviction for such offence the punishment under section 193 of the Penal Code is imprisonment for a term which may extend to seven years and also liability to a fine;

(3) there was no material discrepancy or contradiction between the statement and the evidence given by him in court which formed the basis of the charge nor were certain conclusions arrived at by the president maintainable.

Case referred to:—

(1) *Haji Yusof bin Keromo v. Public Prosecutor* [1952] M.L.J. 242.

CRIMINAL APPEAL.

David Choong for the appellant.

Haji Suhaimi bin Dato Haji Kamaruddin
(Deputy Public Prosecutor) for the respondent.